

US e-commerce sales rise 12.2% amid new multistate tax challenges

■ CAURIE PUTNAM

U.S. retail e-commerce sales reached \$340.2 billion in the second quarter of 2026, up 12.2% from a year earlier, according to the U.S. Census Bureau. But selling across state lines, or employing workers who live in other states, can create tax nexus and new tax obligations for businesses.



Kelly E. Marks

“Most states now have some form of economic nexus, which generally means that the state can tax the income of an out-of-state business that sells into the state even if the business has no physical presence in the state,” said Kelly Marks, a partner and Tax Practice Team Leader at Phillips Lytle.

The specific obligations depend in part on what the business does and where its customers are located. Companies selling goods or providing services across state lines may face income tax reporting and payment requirements, while some states also impose withholding obligations related to nonresident owners. Sales tax

collection and reporting requirements may apply as well.

Remote employees can create another layer of multistate tax exposure.

“If the state in which the employee works has a personal income tax, the employer will likely have state and potentially local income tax withholding obligations,” Marks said. “Locating an employee in another state would likely expose the business and/or its owners to state income tax reporting and payment obligations.”

One issue particularly relevant to New York employers is the state’s “convenience of the employer” rule, which Marks said many businesses do not fully understand.

“Under this rule, New York State’s personal income tax withholding obligations can apply to the wages of remote employees who work in another state if they work in the other state for their own needs rather than the business needs of the New York employer,” she said.

The concept of economic nexus changed significantly following the U.S. Supreme Court’s 2018 decision in *South Dakota v. Wayfair*, said Justin J. Andreozzi,

a partner at Lippes Mathias. The decision cleared the way for states to establish economic nexus based on a business’s sales into a state, even without a physical presence there.

“The complicated thing is that the thresholds change, and the rules vary by state,” Andreozzi said.



Justin Andreozzi

For example, Andreozzi said, a New York company with no employees, property or offices in Pennsylvania could still establish nexus there through its sales. If its sales into Pennsylvania exceed \$100,000 and other applicable requirements are met, the company would be required to collect and remit sales tax.

“If they don’t do that, then Pennsylvania audits them, and for years going back they would be responsible, even if they didn’t collect the sales tax,” Andreozzi said. “It’s their responsibility to pay it. So now you’re paying that tax, plus penalties potentially, plus interest, and it

can totally derail an otherwise profitable business.”

Remote work can create similar exposure, sometimes through a single employee.

“One employee can matter,” Andreozzi said.

Depending on the jurisdiction, a remote employee can establish a physical presence that creates nexus for income and other taxes and can trigger payroll withholding, unemployment insurance and employer registration requirements.

“The remote work issue often starts innocently,” said Andreozzi, who explained that an employee might move to another state without changing jobs, but that relatively simple move can create new tax and filing obligations for the company.

One of the biggest risks is that those compliance problems can remain hidden and compound over time, Andreozzi said. A company may operate for years before discovering an issue through an audit, a financing request or due diligence surrounding a merger, acquisition or sale.

“The problems are always cheaper to prevent than to clean up,” he said.

Andreozzi recommends businesses conduct a nexus review at least annually, mapping where they operate, sell products or provide services, where their customers and employees are located, how much revenue they generate in each state, where they have property or inventory

and where they are registered and filing tax returns.

“You have to be on top of this, understand the obligations and the different rules in each jurisdiction, and make sure you’re staying ahead of issues so you don’t get derailed,” Andreozzi said.

William A. Morgan, senior counsel at Harris Beach Murtha, said businesses also need to recognize that multistate tax exposure can extend beyond income and sales taxes.



William Morgan

“If you have an employee in a different state, you’re deemed to be doing business in that state,” Morgan said.

That can mean filing an income tax return as well as registering with the state’s unemployment system and making unemployment tax payments there.

“Just because you have to file income tax returns doesn’t mean you’re necessarily going to owe them income tax either,” Morgan said. “But you do want to be in what’s called filing compliance.”

For businesses in regulated professions, crossing state lines can raise licensing issues in addition to tax obligations. Morgan said a financial adviser, for example, may have clients in another state without realizing that providing services there could create questions about professional licensing as well as business registration and tax filings.

“State income and sales tax is a rather tricky web for a lot of people to navigate,” said Morgan, who noted the complexity can be particularly challenging for small and midsize businesses, which may be focused on serving customers and growing their operations rather than tracking the tax implications of where every customer or employee is located.

Morgan said businesses should seek guidance whenever their operations cross state lines to determine whether new tax, registration or other requirements may apply.

“One of the challenging things is, as attorneys, we’re usually brought in when things are sideways,” Morgan said.

A conversation with an attorney or accountant before taking on an out-of-state client or allowing an employee to relocate can help a business identify potential obligations before they become more difficult and costly to address.

That can be particularly important with remote employees, Morgan said, because errors involving payroll withholding and unemployment taxes can carry significant consequences.

“The penalties and interest on those inure to the owners of the businesses personally generally, and they’re substantial,” said Morgan, who added that addressing those obligations from the outset can help businesses avoid unexpected costs and the more complicated task of correcting years of noncompliance.